

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

KNIGHTO, LLC d/b/a KNIGHT SOLUTIONS *
208 South King Street
Suite 104
Leesburg, Virginia 20175 *

Plaintiff, *

v. *

Case No.: _____

GROUND EFX LANDSCAPING, LLC *
4852 S. Bellview Road
Rogers, Arkansas 72758 *

Serve on Registered Agent: *
Matthew Veech
513 S. Dodson Road, Suite 100 *
Rogers, Arkansas 72758 *

and *

OLD REPUBLIC SURETY COMPANY, *
235 N. Executive Drive, #270
Brookfield, Wisconsin 53005 *

Serve on Registered Agent: *
Insurance Commissioner
Maryland Insurance Administration
200 St. Paul Place, Suite 2700 *
Baltimore, Maryland 21202 *

Defendants *

* * * * *

COMPLAINT

Knighto, LLC d/b/a Knight Solutions (“Knight”), hereby sues Defendants Ground EFX Landscaping, LLC (“Ground EFX”) and Old Republic Surety Company (“Old Republic”) and states as follows:

The Parties

1. Knight is a Virginia corporation. Its principal place of business is located in Leesburg, Virginia. Knight is a general contractor in the construction industry.

2. Old Republic is a Wisconsin corporation. Its principal place of business is located in Brookfield, Wisconsin. Old Republic is, among other things, a surety in the construction industry.

3. Ground EFX is an Arkansas corporation. Its principal place of business is located in Rogers, Arkansas. Ground EFX is in the business of commercial landscaping.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a). There is complete diversity between the parties and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

5. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b)(3) per the parties' written consent as set forth in Section 12.2 of the Master Subcontract Agreement executed by Knight and Ground EFX which states "venue for any litigation shall be exclusively brought in the federal or state courts on the State of Maryland.

Facts

6. On or about June 16, 2020, Knight contracted with the United States Department of Veterans Affairs, National Cemetery Administration, under Contract No. 36C78620C0286 (the "Prime Contract"), to serve as the prime contractor for a construction project known as the "Ft. Smith National Cemetery Gravesite Expansion," which is located in Fort Smith, Arkansas (the "Project").

7. On or about August 4, 2020, Knight entered into a Master Subcontract Agreement with Ground EFX, which governs the general terms and conditions between the parties. A true and correct copy of the Subcontract is attached hereto and is incorporated herein by reference as **Exhibit A**. On or about January 20, 2021 Knight and Ground EFX executed a Subcontract Agreement Rider under which Ground EFX agreed to provide all labor, materials, and equipment associated with the relevant and necessary landscaping, planting irrigation, planting, trenching, backfilling, and compacting at the Project. A true and correct copy of the Subcontract Agreement Rider is attached hereto and is incorporated herein by reference as **Exhibit B**. The Master Subcontract Agreement and Subcontract Agreement Rider are herein collectively referred to as the “Subcontract.”

8. In accordance with the terms of the Subcontract, Ground EFX agreed to perform all work in a good and workmanlike manner in compliance with the requirements of the Project, contract drawings, contract specifications, as well as perform all work in accordance with the Project schedule.

9. In accordance with Paragraph 2.6 of the Subcontract, Ground EFX, as principal, and Old Republic, as surety, provided a performance bond identified as Bond No. SBA5931972 (the “Bond”), which guaranteed the full and faithful performance of the work detailed in the Subcontract by Ground EFX, and which further states that Knight shall be held harmless should Ground EFX fail to perform under the Subcontract. A true and correct copy of the Bond is attached hereto and is incorporated herein by reference as **Exhibit C**.

10. Paragraphs 4.9 and 11.1 of the Master Subcontract Agreement and The Bond’s terms expressly permit the recovery of expenses and attorney’s fees. *See* **Exhibits A & C**.

11. Ground EFX failed to perform its obligations under the Subcontract by failing to perform the work in compliance with the requirements of the Project, the contract drawings and the specifications, and performed defective work.

12. Ground EFX also failed to perform its work on time and in accordance with the Project schedule.

13. In accordance with the Subcontract, Knight notified Ground EFX (and Old Republic) of its defective performance and defaults in its obligations under the Subcontract, and Knight demanded that Ground EFX cure its defective performance and defaults.

14. However, Ground EFX has failed to cure its defective performance and defaults.

15. As a result, Knight was forced to incur costs to cure Ground EFX's defaults and defective performance and to complete Ground EFX's work.

16. Additionally, because of the delays caused by Ground EFX, Knight was forced to remain on the Project for a greater period of time than would have been required had Ground EFX timely performed its work, which additional performance period caused Knight to incur additional costs and damages.

17. Specifically, Knight incurred direct costs of \$231,244.19 to correct and complete Ground EFX's work and extended general conditions costs totaling \$365,535.37 due to delays caused by Ground EFX to completion of the Project. These itemized costs are attached hereto and incorporated herein by reference as **Exhibit D**.

18. The total amount of costs incurred by Knight as a result of Ground EFX's failure to perform is \$596,779.56.

19. Knight made a demand upon Old Republic under the Bond for payment of the costs and damages incurred by Knight as a result of Ground EFX's failures in performance, totaling

\$596,779.56, which costs and damages are also the responsibility of Old Republic under the terms of the Bond. A true and correct copy of this demand is attached hereto and is incorporated herein by reference as **Exhibit E**.

20. Despite this demand, Old Republic has failed and refused to reimburse, indemnify or hold Knight harmless from the costs and damages sustained by Knight as a result of Ground EFX's failures.

21. Despite demand, Ground EFX has likewise wholly failed to make any payment to Knight in any amount.

22. Knight has complied with all conditions and requirements of the Subcontract and the Bond and/or such conditions and requirements have been waived or excused.

COUNT I
(Breach of Contract – Ground EFX)

23. Knight incorporates by reference the allegations of paragraphs 1 through 22 as if fully restated herein.

24. Ground EFX failed to perform its obligations under the Subcontract by failing to perform the work in compliance with the requirements of the Project, the contract drawings and the specifications, and performed defective work, thereby materially breaching the Subcontract.

25. Ground EFX also failed to perform its work on time and in accordance with the Project schedule, thereby materially breaching the Subcontract.

26. In accordance with the Subcontract, Knight notified Ground EFX (and Old Republic) of its defective performance and defaults in its obligations under the Subcontract, and Knight demanded that Ground EFX cure its defective performance and defaults.

27. However, Ground EFX has failed to cure its defective performance and defaults.

28. As a result, Knight was forced to incur costs to cure Ground EFX's defaults and defective performance and to complete Ground EFX's work.

29. Additionally, because of the delays caused by Ground EFX, Knight was forced to remain on the Project for a greater period of time than would have been required had Ground EFX timely performed its work, which additional performance period caused Knight to incur additional costs and damages.

30. As direct and proximate cause of Ground EFX's failures of performance, Knight has incurred costs and suffered damages totaling \$596,779.56.

31. Pursuant to paragraph 4.9 of the Subcontract, Knight is expressly permitted to recover from Ground EFX reasonable attorney's fees incurred in enforcing the terms of the Subcontract.

WHEREFORE, Knighto, LLC d/b/a Knight Solutions hereby demands judgment against Defendant Ground EFX Landscaping and Property Preservation, LLC in an amount not less than \$596,779.56, plus pre-judgment interest, post-judgment interest, attorney's fees, and costs, together with such other and further relief as this Court may deem appropriate.

COUNT II

(Breach of Performance Bond – Old Republic)

32. Knight incorporates by reference the allegations of paragraphs 1 through 31 as if fully restated herein.

33. Pursuant to the terms of the Bond, Old Republic bound itself to Knight for the faithful performance by its principal, Ground EFX, of the Subcontract for the Project.

34. The defaults, failures and material breaches of Ground EFX trigger the liability of Old Republic under the Bond pursuant to its terms.

35. Knight made a demand upon Old Republic under the Bond for payment of the costs

and damages incurred by Knight as a result of Ground EFX's failures in performance, totaling \$596,779.56, which costs and damages are also the responsibility of Old Republic under the terms of the Bond. A true and correct copy of this demand is attached hereto and is incorporated herein by reference as **Exhibit E**.

36. Despite this demand, Old Republic has failed and refused to reimburse, indemnify or hold Knight harmless from the costs and damages sustained by Knight as a result of Ground EFX's failures.

37. Old Republic's failure and refusal to pay the amount demanded or otherwise indemnify, hold harmless and reimburse Knight for the costs and damages sustained by Knight as a result of Ground EFX's failures is a breach of the Bond.

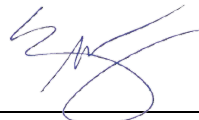
38. Knight has been damaged by Old Republic's breach of the Bond in the amount of \$596,779.56.

WHEREFORE, Knighto, LLC d/b/a Knight Solutions hereby demands judgment against Defendant Old Republic Surety Company in an amount not less than \$596,779.56, plus pre-judgment interest, post-judgment interest, attorney's fees, and costs, together with such other and further relief as this Court may deem appropriate.

Date: May 24, 2023

Respectfully submitted,

DAVIS, AGNOR, RAPAPORT & SKALNY, LLC



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